

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

7 CITY OF HENDERSON, et al.)
8 Plaintiffs,) Case No. 2:12-cv-00780-JCM-NJK
9 vs.)
10 SPAN SYSTEMS, INC.,) ORDER REQUIRING
11 Defendant.) SUPPLEMENTAL BRIEFING
Docket No. 29)

Pending before the Court is the Defendant's motion to stay proceedings pending resolution of an arbitration. Docket No. 29. Plaintiffs filed a response and Defendant filed a reply. Docket Nos. 32, 33. For the reasons discussed below, the Court hereby **ORDERS** the parties to file supplemental briefs no later than February 14, 2013.

Defendant requests that the Court issue a stay pursuant to section 3 of the Federal Arbitration Act, acknowledging that “the facts of this matter present a novel question of law [and] Span has not been able to find any case law on point with the facts of this matter.” Reply at 3-4. Nor does Plaintiff’s response appear to rely on case law that is on-point. *See* Response at 2 (distinguishing two cases based on the facts before the Court).

Before the Court wades into a novel issue of law, it appears that an alternative basis for ruling may exist.¹ Courts have inherent power to stay the cases before them as a matter of controlling their own docket and calendar. *See Landis v. North American Co.*, 299 U.S. 248, 254-55 (1936). The Ninth Circuit has found such a stay may be proper when arbitration proceedings are ongoing:

¹ The Court expresses no opinion at this time regarding the arguments already presented.

1 A trial court may, with propriety, find it is efficient for its own docket and the fairest
 2 course for the parties to enter a stay of an action before it, pending resolution of
 3 independent proceedings which bear upon the case. This rule applies whether the
 4 separate proceedings are judicial, administrative, or *arbitral* in character, and does
 5 not require that the issues in such proceedings are necessarily controlling of the
 6 action before it. In such cases the court may order a stay of the action pursuant to its
 7 power to control its docket and calendar and to provide for a just determination of the
 8 cases before it.

9
 10 *Mediterranean Enterps., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983) (emphasis
 11 added) (quoting *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979)). In
 12 making such a ruling, the Court must consider a number of factors including, *inter alia*, whether the
 13 arbitration proceedings will be concluded within a reasonable time in relation to the urgency of the
 14 claims presented to the court. *See Leyva*, 593 F.2d at 864. Moreover, “if there is even a fair
 15 possibility that the stay . . . will work damage to some one else,” a stay may be inappropriate absent
 16 a showing by the movant of “hardship or inequity.” *See Landis*, 299 U.S. at 255.

17 The Court finds that the briefing does not adequately address the relevant issues or Ninth
 18 Circuit authority for a discretionary stay for the Court to make a ruling at this time. Accordingly,
 19 the Court orders the parties to file supplemental briefs no later than February 14, 2013 regarding:

20 (1) Whether the Court can order a stay of all claims before it based on its inherent authority
 21 without ruling on the parties’ “novel” arguments regarding the Federal Arbitration Act; and
 22 (2) Whether the relevant factors for such a stay militate in favor of staying this case.

23 IT IS SO ORDERED.

24 DATED this 6th day of February, 2013.

25
 26
 27
 28 NANCY J. KOPPE
 United States Magistrate Judge